IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2892 OF 2004

Lalbahadur Ram Yadav .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

ALONGWITH

WRIT PETITION NO.2894 OF 2004

Bhaguji Rakhmaji Kavde .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

ALONGWITH

WRIT PETITION NO.2895 OF 2004

Rajaram Dnyaneshwar Jagtap & Ors. .. Petitioners.
Vs.
The State of Maharashtra & Ors. .. Respondents.

ALONGWITH

WRIT PETITION NO.2896 OF 2004

Narayan Rakhmaji Kavde .. Petitioner.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr.P.K.Dhakepalkar for the petitioner.
Mr.S.K.Chinchalikar for the respondents.

CORAM : D.B.BHOSALE, J.

DATED : 6TH APRIL, 2004

ORAL JUDGMENT :

. Heard Mr.Dhakepalkar, learned counsel for the petitioners and Mr.Chinchalikar, learned A.G.P. for the respondents.

2. Rule, returnable forthwith.

3. Mr.Chinchalikar, learned counsel waives service for the respondents. By consent of the parties taken up for the final hearing.

4. The petitioners in all the four petitions have challenged the separate orders dated 29.1.2004 passed by respondent no.1 - Sub Divisional Officer rejecting the reference application filed by the petitioners under section 34(1) of the Maharashtra Industrial Development Act, 1961 (for short 'the Act') on the ground that court fee alongwith reference application had not been paid within the stipulated time of 60 days.

5. The award in these writ petitions was made

by the Collector on 11.11.2003. The Reference Application under section 34(1) of the Act was filed by all the petitioners on 12.1.2004. Admittedly, an application alongwith the reference application was filed seeking one month's time to pay court fee. However, respondent no.1 by his order dated 29.1.2004 rejected the reference applications filed under section 34(1) of the Act on the ground that alongwith the reference application requisite court fee was not paid within 60 days. In other words, according to respondent no.1, the petitioners ought to have deposited requisite court fee alongwith the reference application made under section 34(1) of the Act.

6. Mr.Dhakepalkar, learned counsel for the petitioners, at the outset, submitted that respondent no.1 has committed manifest illegality in interpreting section 34(1) of the Act to mean that requisite court fee should be deposited alongwith an application under section 34(1) of the Act. He placed heavy reliance upon the judgment of the Apex Court in **Kashi Ram Namdeo Zambro Vs. State of Maharashtra (1996) 1 Supreme Court Cases 289** to contend that filing of an application under

section 34(1) of the Act within limitation prescribed is sufficient compliance inasmuch as non payment of court fee alongwith the reference application is not the requirement of law. Mr.Dhakepalkar further submitted that the order passed by respondent no.1 is, therefore, liable to be quashed and set aside with further directions to respondent no.1 to make a reference as contemplated under section 34 of the Act. Mr.Chinchalikar, learned A.G.P. on the other hand fairly submitted that the provisions of section 34 of the Act are pari materia with the provisions of section 18 of the Land Acquisition Act, 1894 and in view thereof question involved in the Writ Petitions is squarely covered by the judgment of Apex Court in **Kashi Ram Namdeo Zambro** (supra).

7. Section 18 of the Land Acquisition Act provides that any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment

of the compensation among the persons interested. It further provides that such an application be made within six weeks from the date of the Collector's award, if the person making it was present or represented before the Collector at the time when he made the award, and in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire. Similarly section 34 of the Act provides that any person aggrieved by the decision of the Collector determining the amount of compensation may, within sixty days from the date of such decision, in so far as it affects him, by written application to the Collector require that the matter be referred by him for determination of the Court as defined in the Land Acquisition Act, 1894, in its application to the State of Maharashtra, and when any such application is made the provisions of Part III of the said Act shall mutatis mutandis apply to further proceedings in respect thereof. Keeping the provisions of section 18 of the Land Acquisition Act and section 34 of the Act in view the question requires consideration in the instant

petition is whether any person aggrieved is required to pay court fee on an application seeking reference under section 34 of the Act. The scheme of the provisions of section 34 of the Act is indubitably pari materia with the scheme of section 18 of the Land Acquisition Act. Moreover, it is also clear that once a reference under section 34 of the Act is made by the Collector the provisions of Part III shall mutatis mutandis apply to further proceedings in respect thereof. The case of the petitioners is, therefore, squarely covered by the judgment of the Apex Court in **Kashi Ram Namdeo Zambro** (supra). In that case the reference was made to the Civil Court and during reference proceedings, the counsel appearing for the State raised preliminary objection as to maintainability of the reference which was upheld since requisite court fee was not paid within six weeks from the receipt of the notice of the award, as required under clause (b) of proviso to sub-section (2) of section 18 of the Land Acquisition Act. On appeal, the High Court upheld the contention and, accordingly, dismissed the appeal. While dealing with the appeal by special leave against the decree of Bombay High Court the

Apex Court in paragraph 2 of the report held thus:

> "2. The only question that arises for consideration is whether the claimant is required to pay court fee on an application seeking reference under section 18. We are at a loss to understand that a claimant is required to pay ad valorem court fee on an amount awarded by the Collector under section 11 for seeking reference under section 18. What is required is to make a written application with particulars envisaged under section 18(2) of the Act, to the Collector requiring the matter to be referred to the civil court to decide his objection regarding measurement of the land or the amount of compensation or the person to whom it is payable or the apportionment of the compensation awarded to the persons interested. The Act is a self-contained Code and it does not speak of payment of any court fee. It requires only that the application should be made within the limitation prescribed either in clause (a) or (b) of sub-section (2) of the Act. It

> is, therefore, clear that non-payment of the deficit court fee, though wrongly made by the appellant, is not necessary. The owner or person interested is not enjoined under law to pay any court fee on the application made under section 18(1) seeking reference for determination of the compensation by the civil court etc. The civil court and the High Court, therefore, have committed grave error of law in rejecting the claim of the appellant for determination of the compensation".

8. A requirement of the law is, thus, clear. Any person aggrieved should make written application under section 34 of the Act to the Collector within the limitation prescribed under sub-section (1) of section 34 with particulars envisaged under that section and if such an application is filed within limitation, it is mandatory for the Collector to make reference for determination of compensation by the court as defined in the Land Acquisition Act, 1894. And when any such application is made the provisions of Part III of the Land Acquisition Act shall mutatis

mutandis apply to further proceedings in respect thereof. A person aggrieved is not enjoined under law to pay any court fee on the application made under section 34(1) seeking reference for determination of the compensation by the civil court inasmuch as the Act and the Land Acquisition Act do not speak of payment of any court fee on the reference application. In this view of the matter the order impugned cannot be sustained and is liable to be quashed and set aside. Order accordingly. Respondent No.1 is directed to make reference under section 34(1), within four weeks from the date of production of this order.

9. Parties to act on an ordinary copy of this order duly authenticated by the Sheristedar/Court Stenographer of this court.

(D.B.Bhosale, J.)

HIGH COURT AT BOMBAY
APPELLATE SIDE

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Date of Decision: 6th April, 2004

For approval and signature:

The Hon'ble Mr. Justice : D. B. BHOSALE

1. Whether Reporters of Local papers may be allowed to see the judgement ?

2. To be referred to the Reporter or not ?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question i of law as to the interpretation of the Constitution of India, 1950, or any Order made thereunder ?

5. Whether it is to be circulated to the Civil Judges ?

6. Whether the case involves an important question of law and whether a copy of the judgment should be sent to Nagpur Office?

reported.